REMARKS

Upon entry of the instant Amendment, Claims 1-17 are pending. Claims 12 and 15 have been amended to overcome the Section 112 rejections. Claims 1, 6, and 11 have been amended to more particularly point out Applicants' invention.

Claims 2-5, 7-10, 13-14, and 16-17 were objected to because of use of "A" rather than "The" in the preambles of the dependent claims. Applicants respectfully submit that, since each claim is itself a separate invention, use of the indefinite article is appropriate. As such, the Examiner is respectfully requested to withdraw the objection.

Claims 12-17 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the term "said quality of service" in claims 12 and 15 was indicated to lack antecedent basis. Claims 12 and 15 have been amended to recite "sending said IP protocol data packets over an Ethernet network using a quality of service as specified in said QoS Ethernet quality of service commands." As such, the Examiner is respectfully requested to reconsider and withdraw the rejection.

Claims 1-2, 6-7, 11-13 and 15-16 were rejected under 35 U.S.C. §102(e) as being anticipated by Fijolek et al., U.S. Patent No. 6,577,642 ("Fijolek"). In order for there to be anticipation, each and every element of the claimed invention must be present in a single prior reference. Applicants respectfully submit that the claimed invention is not taught, suggested, or implied by Fijolek.

As discussed in the Specification, a telephony-over-LAN telecommunication system is provided. According to one implementation of the present invention, existing software sets TOS bits during IP encapsulation. A Generate QoSEthernet layer receives the TOS bits and translates them into a form compatible with the QoSEthernet requirements so as to define an Ethernet quality of service. That is, the Layer 3 ToS bits are read by and implemented at the Layer 2 Ethernet switch. In a particular

implementation, the Generate QoSEthernet layer is embodied in an H.323 Recommendation telecommunication system.

Thus, claims 1, 6, and 11 have been amended to recite "generate (generating) corresponding Quality of Service commands to said (a) Quality of Service Ethernet layer to define an Ethernet Quality of Service." Similarly, claims 12 and 15 recite "sending said IP protocol data packets over an Ethernet network using a quality of service as specified in said QoS Ethernet quality of service commands."

In contrast, Fijolek appears to provide for using either the VLAN MAC header or the ToS bits for service class. However, Fijolek does not appear to provide for defining a quality of service using ToS bits at the IP layer (Layer 3) for use in Ethernet (layer 2), i.e., by the Ethernet switch. That is, in Fijolek, the layer 3 ToS bits are used at Layer 3. Further, Fijolek appears to define a quality of service based on the sender, rather than the call, as generally recited in the claims at issue. As such, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims.

Claims 3, 8, 14, and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fijolek in view of Shuster et al., U.S. Patent No. 6,363,053 ("Shuster"). Applicants respectfully submit that the present invention is not taught, suggested, or implied by Fijolek or Shuster, either singly or in combination. Fijolek has been discussed above. Shuster is relied on for allegedly teaching a differentiated service byte. However, like Fijolek, Shuster does not appear to relate to defining a quality of service using ToS bits at the IP layer (Layer 3) for use in Ethernet (layer 2). As such, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims.

Claims 4 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fijolek in view of Bender et al., U.S. Patent No. 6,539,030 ("Bender"). Applicants respectfully submit that the present invention is not taught, suggested, r implied by Fijolek or Bender, either singly or in combination. Applicants respectfully submit that the present invention is not taught, suggested, or implied by Fijolek or Bender, either

singly or in combination. Fijolek has been discussed above. Bender is relied on for allegedly teaching modular protocol layers. However, like Fijolek, Shuster does not appear to relate to defining a quality of service using ToS bits at the IP layer (Layer 3) for use in Ethernet (layer 2). As such, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims.

Claims 5 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fijolek in view of Shuster and Bender. For reasons similar to those discussed above, Applicants respectfully submit that these claims, too, are not taught, suggested, or implied by these references.

For all of the above reasons, Applicants respectfully submit that the application is in condition for allowance, which allowance is earnestly solicited.

Respectfully requested,

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